The PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE OVERREACH

Mr. HATCH. Mr. President, I rise to discuss a critical issue facing this body and this country. The occasion for my remarks happens to be the nomination of Sylvia Mathews Burwell to head the Department of Health and Human Services. As a senior member of the HELP Committee and the ranking member on the Finance Committee, I have taken a great deal of interest in her nomination and have participated in her confirmation hearings.

I am afraid the cordial nature of our exchanges and my recognition of Ms. Burwell's impressive qualifications has allowed some ObamaCare partisans to misconstrue my approaches as an acknowledgment that somehow the Affordable Care Act is working. Let me be absolutely clear on this point. I oppose ObamaCare, and I am going to fight as long as it takes to repeal that misguided law and replace it with a system that actually works for American families.

That is why I have collaborated with several of my colleagues to unveil the framework of the Patient CARE Act, a plan that would repeal ObamaCare and replace it with commonsense, patient-centered reforms that would reduce health care costs and increase access to affordable, high-quality care. It would save the taxpayers about $1 trillion and yet have a better health care system than we have today with Obama.

Let me also be clear on another point. No matter what the administration says, the reality is that ObamaCare is not working. The President and his allies are claiming the law is a success because the administration has mostly corrected the botched roll-out of healthcare.gov and has had a certain number of individuals sign up—as if forcing people into ObamaCare, under the coercive threat of government penalty, is somehow cause for celebration. In reality, the mass cancellation of insurance coverage last fall was just the first prick of pain ObamaCare will inflict on the American people.

I could talk for hours about rising premiums, growing deficits, backdoor bailouts and of course numerous other maladies, all of which threaten the quality and the enforceability of health insurance for so many Americans already struggling through the Obama economy, but the concern that motivates me to speak today goes beyond the many failures of ObamaCare as a matter of policy. Perhaps the most troubling of all has been the unlawful manner in which this administration has gone about implementing it.

When faced with the prospect of enforcing disruptive features of his signature law, the President has chosen to ignore his fundamental obligation to enforce the law and has instead sought to rewrite various provisions of ObamaCare unilaterally.

These actions form a troubling pattern of lawlessness and executive overreach by the Obama administration, one that all citizens and all Members of this esteemed body, whether Republican or Democrat, ought to condemn and resist.

The harms I will discuss today are not just a theoretical abstraction. This administration's abuse is a very real threat to our constitutional system of government and to the liberties each of us enjoys. In recent weeks, I have come to the floor on a number of occasions to speak out about the Obama administration's lawlessness in a wide variety of contexts. I will continue to do so to defend the separation of powers, the rule of law, and the legitimate prerogatives of the legislative branch and this body in particular under the Constitution.

Even in light of these serial abuses which have only accelerated under the President's new ''pen and phone'' strategy, the implementation of ObamaCare stands out as the crown jewel of executive overreach. By my count, this administration has acted unilaterally on at least 22 separate occasions to alter the law, something it does not have the right or power to do.

Through its actions, the Obama administration, in particular the current Health and Human Services Secretary, has demonstrated cavalier disregard for the constitutional obligations of the executive branch. The President and his team have shown outright contempt for the legitimate role of Congress.

Today, I wish to highlight a few of the Obama administration's most egregious acts and explain why these actions are unlawful and pose such a serious threat to our constitutional system of government. Let me begin with something most Americans unfortunately remember all too well, President Obama's now infamous promise that if you like your plan, you can keep it.

Make no mistake, this promise was the key selling point for ObamaCare, which was approved by the Senate by a razor-thin party-line vote. Without the President's assurance that Americans could keep their current health plans if they wished, the bill simply would not have passed this Chamber.

Yet it has long been clear that the White House never intended for Americans to be able to keep their plan. I do not say that lightly. It is not some unsubstantiated partisan attack. It is a well-documented fact. From the very beginning one of the key premises underlying ObamaCare's government takeover of health care was the notion that Americans could not and should not be trusted to choose their own health insurance and that instead Washington's so-called experts could be tasked with determining the sort of coverage Americans could buy.

Indeed, that is the entire point of having the minimum coverage provision the Obama administration fought so hard to include in the bill. If Americans' existing plans do not comply with some government official's specifications, then ObamaCare forces individuals off of their insurance. To put the President's promise more honestly, if he likes your plan, you can keep it.

Several respected news outlets have responded how policy aides within the Obama White House objected to the President's obviously inaccurate claim that if you like your plan you can keep it, only to be overruled by the President's appointed political advisers. Despite knowing it was false, the administration purposely perpetrated this dishonest claim.

Tragically, millions of Americans relied on the President's promise, only to face the prospect of having their health insurance plans cancelled after his re-election. To make matters worse, the administration did not settle for the natural attrition that would eventually force Americans with the plans they like to buy an additional level of coverage, one they did not want, but one that ObamaCare forced them to purchase. No. Instead the administration rushed to publish regulations that defined exactly which existing plans could be grandfathered into the new scheme. The regulatory definition was so narrow in scope that even a minor or routine change to an existing plan could disqualify it.

As the Solicitor General recently conceded to the Supreme Court, Obama administration officials knew the number of qualifying individuals would be ''very, very low, because it is to be expected that employers and insurance companies are going to make decisions that trigger the loss of the so-called grandfather status under the governing regulations.''

Given the President's broken promise and the many cancelled plans, I joined with a number of colleagues to move quickly to use our power under the Congressional Review Act to try to overturn these regulations. Unfortunately, every single one of my colleagues on the other side of the aisle voted against providing this relief.

What followed was tragic but entirely predictable. Insurers were forced to cancel policies and millions of Americans were unable to keep the plans they liked. When ObamaCare's failed social engineering became a reality in the wake of millions of cancellation notices that went out last fall, even staunch supporters felt the intensity of the inevitable public outrage. Many in this body were eager to support legislation that offered relief to constituents suffering from this latest dose of the ObamaCare plan.

The House of Representatives passed legislation with the bipartisan support of more than three dozen Democrats that would have allowed insurers to continue to offer the plans that millions of Americans had chosen to purchase. Yet once the chorus of public outrage got so loud that even President Obama could no longer ignore

ObamaCare's destructive effects, what did he do? Did he try to work with a bipartisan majority in Congress to provide relief to the hard-working Americans injured by ObamaCare's forced cancellations, did he move to rescind the administration's aggressive regulations, or did he bite the bullet and enforce the law as written, demonstrating that he was willing to endure the unpopularity in order to live up to his obligations under the Constitution?

Unfortunately, President Obama chose none of these legitimate approaches. Instead, his Department of Health and Human Services simply acted unilaterally to cancel and then rewrite the minimum coverage requirements in the statute. After doing so, HHS simply cited the vague notion of transitional relief as the only possible suggestion of where the administration could find executive authority to refuse to enforce clear statutory law.

In reality, this action represents a shocking and radical abuse of power by this administration. Let me offer some background to contextualize how extreme the Obama administration's claimed authority is in this instance. In the enforcement of this Nation's tax laws, the IRS has for some time claimed the authority to adjust how a new tax is phased into operation, providing a slight delay in enforcement to ease the administrative burden imposed by the new tax.

The IRS has engaged in this practice to adjusting enforcement timing with some regularity through the use of this asserted authority, which tends to be narrow, for example, by delaying the retroactive enforcement of an aviation fuel excise tax by just 16 days. The Obama administration's attempts to fix the failed bailout from the ''if you like your plan you can keep it'' lie does not even involve tax law, nor does it involve the IRS's past practice or its claimed legal authority.

The Department of Health and Human Services simply invoked the claimed powers of the IRS in a wholly distinct context, a context in which it could not point to statutory authority or a similar history of past practice. In the absence of clear authority to alter or cancel enforcement, the President remains constitutionally obligated to take care that the laws be faithfully executed.

In this case, the Obama administration does not have a leg to stand on. The sort of transitional relief here is nothing like a minor 16-day delay. The failure to enforce the minimum coverage provisions will now drag on for 3 full years past the required statutory deadline. The administration's fix is different in kind from prior examples of transitional relief, because in this case the government did not actually face enforcement difficulties. Insurance companies had already complied with the statute by canceling millions of plans, as the law required them to do.

In fact, precisely the opposite was true. What finally motivated the administration to act was, instead, the public backlash generated from proper compliance with the law.

No matter how much the Obama administration may want to mitigate the disastrous effects of its own signature law, neither HHS nor any other part of the executive branch has legitimate authority, in the form of prosecutorial discretion or otherwise, to ignore or rewrite a Federal statute.

In the words of the Justice Department's longstanding position: The President may not ''refuse to enforce a statute he opposes for policy reasons.'' But that is precisely what the Obama administration has done in this case. The whole idea of administrative transitional relief is premised on the notion that such action is properly derived from, or at the very at least is consistent with, relevant statutory authorities. Here, the administration's action directly contradicts the plain language of the statute, which obligates insurance companies to offer only plans compliant with the statute's requirements and which obligates State and Federal governments to enforce those requirements.

A generic brand of regulatory authority cannot provide the executive branch with unilateral power to rewrite effective dates made explicit in the statute. This is especially true of ObamaCare, since, as we were told repeatedly during the debate over the law, the precise effective dates for various intertwined provisions were deemed central to the effectiveness of the entire statutory scheme.

All this is to say that the Obama administration's actions in this area far exceed any transitional relief authority the President might rightfully claim and instead amount to a vast illegitimate use and abuse of power by the executive branch. The Constitution obligates the President to follow the law. It also commands him to ''take care that the laws be faithfully executed,'' meaning he must ensure that others subject to his authority comply with the law.

In this case, President Obama has not only rejected his own obligation to follow and enforce the law, but he is also permitting, even urging, States to disobey their obligations to enforce ObamaCare. He is likewise actively encouraging insurance companies to offer plans that violate the company's explicit obligation under the minimum coverage requirements. He is encouraging consumers to participate in and rely on this lawlessness by purchasing what are, in fact, unlawful policies.

Such executive lawlessness should be troubling to all Americans regardless of political stripe or partisan affiliation. It is the Constitution, the political institutions it established, the legal framework it enshrines, the checks and balances it requires, that ensures we remain a government of law and not of men. Absent these essential restraints, we will all become subject to increasing arbitrary rule, a government that knows no bounds and seeks to regulate and control virtually every aspect of our lives.

Sadly, this is just one example of the administration's lawlessness in implementing ObamaCare. It gets worse, though. Consider the individual mandate. I firmly believe the individual mandate constitutes an unprecedented and unconstitutional overreach that, in the words of Supreme Court Justice Anthony Kennedy, ''changes the relationship of the Federal Government to the individual in a very fundamental way.''

But even as we seek to repeal and replace ObamaCare, for now the individual mandate is the law of the land. The President who fought so hard to impose this terrible burden on the American people through the legislative process and in the courts, is bound to enforce it.

Yet when it came time to implement the individual mandate, which the administration long argued was the linchpin of the entire ObamaCare scheme and ''essential to creating effective health insurance markets,'' the administration simply decided that enforcing that provision as written in law no longer suited their interests.

Again, I ask, did the Obama administration work with Congress to relieve this burdensome mandate? Of course not.

As has become his habit, the President once again chose to act unilaterally, stretching his statutory and constitutional authority to the breaking point in an effort to avoid engaging in the legislative process, the only legitimate means of revising the individual mandate.

Let me reiterate that I abhor ObamaCare's individual mandate. I want to repeal it, along with the rest of the Affordable Care Act, so that it no longer infringes on the liberties of any American. But either implementing or repealing the individual mandate must be done lawfully, not by executive fiat.

The administration sought to justify its unilateral actions to delay application of the individual mandate on the basis of ObamaCare's hardship exemption. But in announcing the delay, the administration determined it would exempt anyone who simply completes a hardship form, indicates that their current insurance policy is being cancelled, and considers other available policies unaffordable. Such a standard is the very definition of lawlessness, and it contradicts the letter of the law. Indeed, the White House and its supporters in Congress drafted exceptions to the individual mandate very narrowly to make it as universal as possible.

Although the statute gives the HHS Secretary some flexibility in granting hardship exemptions, the plain text of the law specifies precisely when a health plan is unaffordable, when it costs 8 percent or more of household

income. By granting an exemption to anyone who subjectively thinks that available coverage is unaffordable, HHS has made a mockery of the mandate, not to mention completely ignoring the affordability exemption's objective standard.

In doing so, the Obama administration has stretched beyond recognition the limited regulatory authority it does possess, simply in order to frustrate enforcement of its prized individual mandate.

The administration's unwillingness to enforce the individual mandate, which lies at the very core of ObamaCare, demonstrates not only how the bill has failed to live up to its lofty promises, more fundamentally it shows how irresponsible the President has been in failing to live up to his constitutional obligation to take care that the laws—his signature law, no less—be faithfully executed.

But the administration's lawlessness does not end with the individual mandate. Once again, it only gets worse. In a massive law chock-full of burdensome requirements, the administration has found it necessary to ignore mandates of all shapes and sizes.

Take also the employer mandate. Perhaps less public attention is focused on the administration's effort to dictate coverage requirements backed by stiff penalties to every American business with more than 50 employees. But this employer mandate would have devastating effects, first, by discouraging small businesses from hiring and thereby leaving millions unemployed; second, by forcing employers to cut their employees' work hours, limiting takehome pay for millions of current workers struggling to get by; and, third, by discouraging many employers from even providing health insurance to their workers, leaving millions of Americans to fend for themselves.

As the statutory deadline for implementing the employer mandate approached, even ObamaCare supporters feared these consequences, and the administration once again unilaterally suspended its enforcement of the law.

The first clue that the Obama administration was up to something illegitimate came when HHS announced its total suspension of the employer mandate in a blog post euphemistically and ironically entitled ''Continuing to Implement the ACA in a Careful, Thoughtful Manner.''

That such a significant announcement was made using insidiously innocuous language, that it was made via such an informal medium, came as little surprise given this administration's propensity toward flippant and frequently unaccountable governance by blog post, hashtag, and selfie.

In this case, the announcement did not bother to identify any legal basis for suspending the employer mandate and merely made passing reference to the limited concept of so-called transition relief.

Upon subsequent scrutiny, it became clear that the logic of transition relief simply doesn't apply here because Congress and the President, in passing the bill into law, enacted an explicit statutory requirement detailing when the employer mandate must be implemented. By acting in direct contravention of this explicit statutory deadline, the power of the Obama administration's authority was, as the Supreme Court explained, ''at its lowest ebb,'' with the President authorized to act only if Congress has no constitutional power to act. But in this case Congress's power to lay and collect tax is clearly enumerated in article 1, section 8 of the Constitution.

In other words, the Obama administration's unilateral action to suspend the employer mandate was lawless by any definition, including of the Supreme Court.

It did not have to be that way, and it should not have been that way. A broad bipartisan majority in the House of Representatives acted to provide lawful statutory relief from the employer mandate. The House bill was strictly limited to changing the statutory deadlines for the employer mandate and its reporting requirements, and the bill changed those dates to match the timeline on which the administration announced it intended to begin enforcement. In other words, the House bill gave the administration the precise employer mandate delay it wanted and the bill contained none of the other policy changes that most Republicans favor.

When offered the opportunity to delay the employer mandate in a lawful manner, what did President Obama do? He threatened to veto it. By doing so, the President conveyed in unmistakable fashion that his priority lies in political gamesmanship and that he has no respect for his constitutional obligations.

I wish I could say the Obama administration's reckless and unlawful unilateralism in refusing to enforce the employer mandate ended there. Sadly, it does not.

A few months later, the administration essentially rewrote the employer mandate, announcing it would delay enforcement for years—and, in some cases, permanently—well beyond the precedence of past enforcement delays.

But it still gets worse. Rather than simply offer another blanket delay of the employer mandate, the Obama administration went much farther. Officials announced that the mandate would only be enforced for businesses with 50 to 99 employees if those businesses failed to comply with a new onerous maintenance-of-workforce regulations. That regulation prevents businesses from reducing the size of their workforce or the overall hours of service of their employees unless they have a bona fide business reason acceptable to government bureaucrats.

For businesses with more than 100 employees, the Obama administration likewise suspended enforcement of the employer mandate until 2015, at which time executive officials will replace the statutory requirement requiring coverage for all employees with a new administrative formula for determining how many employees must be offered coverage.

I could stand here all day criticizing the backward logic and terrible consequences of having Federal bureaucrats police the employment practices of our Nation's small businesses. There are so many reasons why the employer mandate is bad policy, but I have come to the floor today to highlight the sheer lawlessness of these unilateral executive actions.

In the case of the employer mandate, the law itself dictates when that mandate should be enforced. HHS has not suggested that it lacks sufficient resources to enforce the mandate, nor can it have considered the equity of enforcement in individual cases when it sweeps up every single business subject to this mandate and categorically refuses to enforce this law.

Instead, the Obama administration has simply abdicated its duty to enforce the law. Even worse, it has usurped legislative authority by devising a wholly different scheme—a wholly different enforcement scheme—with its own conditions, goals, and timeline inconsistent with those prescribed in the statute.

Sadly, the executive abuses of this administration in implementing ObamaCare extend beyond the minimum coverage requirements and the individual and employer mandates.

Consider the unilateral use of a so-called demonstration project to divert attention from ObamaCare's cuts to Medicare Advantage. By providing seniors an alternative to traditional Medicare that takes advantage of market-based competition to enhance patient choice, quality of care, and cost-effectiveness, Medicare Advantage has proven an extraordinary success. I am pleased to have played a role in its creation.

In advancing President Obama's now-broken promise that his health care plan wouldn't add one dime to our deficits, the final ObamaCare bill mandated more than $300 billion—with a B—in cuts to Medicare Advantage over 10 years.

But the Obama administration has had to grapple with yet another inconvenient fact. Medicare Advantage has become increasingly popular with each passing year. As of last year, nearly 3 in 10 Medicare beneficiaries chose it over traditional Medicare. In my home State of Utah, one in three beneficiaries receives coverage from Medicare Advantage.

Rather than acknowledge his blunder and ask Congress to reverse ObamaCare's unwise and unpopular Medicare Advantage cuts, the President has once again taken unilateral action that makes a mockery of his signature law.

His administration used a minor provision, one that allows the administration to demonstrate different bonus

payment models in pilot programs as a thinly veiled guise for delaying Medicare Advantage cuts ahead of an election. Never mind the clear conflict between awarding the bonuses across the board and the statutory purpose of such demonstration projects to determine if the payment changes produced efficiency and economy. Never mind the obvious absurdity of pretending to use pseudodemonstration authority to delay the Medicare Advantage cuts unilaterally, when such a demonstration is at least seven times larger than any other Medicare demonstration conducted since 1995 and is greater than the budgetary impact of all those previous demonstrations combined. And never mind that the statutory authority for the demonstrations calls for budget neutrality.

When I first learned of the Obama administration's clear abuse of this narrow statutory authority, I asked GAO to investigate. GAO's report confirmed that the administration had indeed exceeded its legal authority and recommended canceling the program because it wasted taxpayer money. Still, the administration pressed forward, simply ignoring its obligations and usurping Congress's constitutional power of the purse.

I wish I could say this move was surprising, but through a repeated pattern of such actions, President Obama and his administration have earned a reputation for executive arrogance and constitutional abuse.

The list of fundamentally illegal actions by this administration in implementing ObamaCare goes on and on. For now, let me mention one more example where President Obama has completely disregarded his obligation to enforce the law and yet again sought to usurp Congress's power to make taxing and spending decisions through the constitutionally ordained legislative process.

The ObamaCare provision at issue in this instance is remarkably simple. It provides tax subsidies for individuals to purchase health coverage through an exchange ''established by the State under section 1311.''

Section 1311 is the provision of ObamaCare that allows States the option to create their own exchanges, but section 1311 is not the provision that authorizes the creation of the Federal exchange to operate where the States choose not to act. That is section 1321.

I can't imagine how this provision could be any clearer. The law only authorizes subsidies in connection with State exchanges, not the Federal exchange, and this is no accident. ObamaCare incorporated the principle of so-called cooperative federalism—a polite term for thinly veiled Federal coercion and commandeering of the sovereign States. Indeed, this figleaf hiding Federal dominance was critically important to rounding up 60 votes to pass ObamaCare in the Senate.

As my friend, the former Senate from Montana—now Ambassador to China and a principal author of the ObamaCare text—noted during the Finance Committee markup of the bill, conditioning tax credits in this way was the only means by which our committee could establish jurisdiction to demand rewriting State insurance laws, as ObamaCare requires, but in the end, the Federal Government's own exchange ended up covering the majority of States.

As written, the law does not permit subsidies in connection with the Federal exchange. Given these circumstances, did the administration choose to enforce the legislative compromises to which President Obama agreed by signing the bill into law? Did the White House seek to work with Congress to address this disparity? Of course not.

Yet again, HHS chose to ignore the clear statutory restrictions and instead authorized billions of dollars in illegal subsidies through the Federal exchange in direct conflict with the plain text of the law.

This obvious abuse has been challenged in court, and after hearing the judges' deep skepticism of the administration's case, I am confident the U.S. Court of Appeals for the DC Circuit will roundly reject the Obama administration's radical arguments seeking to justify this lawlessness. I hope the court will hold the administration accountable for its deliberate and unmistakable violation of the law and that it will do so despite the effort by President Obama and his allies to fill the DC Circuit with compliant judges who might overlook the administration's executive abuses, but whatever that or any other court determines as a matter of specific legal principle, the fact remains that Obama administration officials—and in particular the HHS Secretary—have repeatedly and purposefully sought to undermine Congress, usurp legislative power, and become a law unto themselves.

President Obama came into office promising the most transparent and accountable Presidential administration in history. The Obama administration has ended up being transparently lawless.

Today I have discussed only five examples of the administration's lawlessness in implementing ObamaCare. I will save for another day the significant legal concerns surrounding the administration's abusive handling of high-risk pools, its actions involving the small business exchange, its sweetheart deals granting unauthorized exemptions for labor unions, and many other similarly problematic actions.

But even in the five examples I have mentioned today, the overriding point is clear: the tenure of President Obama has amounted to an unmistakable pattern of executive abuse. Time and again his administration has flouted its constitutional responsibilities, exceeded its legitimate authority, ignored duly enacted law, and sought to escape any accountability for its executive overreach.

Such executive abuse cannot stand. Whether Republican or Democratic, each of us has a sworn obligation to defend the Constitution, and each of us has the responsibility to defend the rightful prerogatives of the legislative branch. I have long argued that ObamaCare unconstitutionally intrudes on our most basic liberties, but those liberties cannot be secured when the executive branch defies legal bounds and ignores its constitutional obligations.

The continued well-being of our Nation, the legitimacy of our republican self-government, and the basic liberties of our fellow citizens depend on ensuring the exercise of executive prerogative is properly kept within lawful bounds. Doing so requires continual vigilance—by the courts, by Congress, and by the American people—especially in the face of such reckless lawlessness by the current administration.

Our Nation needs new leadership. Ultimately, we need to elect a new President in 2016, one who will respect the Constitution and seek to protect the rights of its citizens, but until then we need an HHS Secretary who will uphold the law and respect the rightful prerogatives of the legislative branch.

That is why I pressed Ms. Burwell during her confirmation hearing last week about the administration's illegitimate and lawless actions and about the need for a different approach. No matter how cordial our debate may be, no matter her impressive qualifications, my overriding concern is that she be accountable to Congress, to the law, and to the Constitution.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Ms. WARREN). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REED. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS CONSENT AGREEMENT—H.R. 3080

Mr. REED. Madam President, I ask unanimous consent that if the Senate receives the papers with respect to the conference report to accompany H.R. 3080, the Water Resources Reform and Development Act, by Thursday, May 22, at a time to be determined by the majority leader with the concurrence of the Republican leader, but no later than Thursday, May 22, the Chair lay before the body the conference report to accompany H.R. 3080, and the Senate proceed to vote on adoption of the conference report; that the vote on adoption be subject to a 60-affirmative-vote threshold; further, that no motions or points of order be in order to the conference report.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.